

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2870 OF 2002
IN
SUIT NO.3336 OF 2002

Salim Haji Kerawalla ... Plaintiff

v/s

Siraj Azia Babwani and ors. ... Defendants

Mr Jaideep Mitra i/b Ms R.D. Tanna for Plaintiff.

None for Defendants.

CORAM : **D.K.DESHMUKH J.**

DATE : **13TH AUGUST 2004**

P.C.:

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed this suit seeking a decree of partition of shop Nos.5 which is in a building of a Cooperative Housing Society. According to the plaintiff, the plaintiff and the defendant are shown as joint holders of the shop in the share certificate of the Society. The ad-interim order was declined to the plaintiff because the Court found that in view of provisions of section 91 of the Maharashtra Cooperative Societies Act, the suit may not be maintainable and for this relief, dispute may lie before the Cooperative Court. The learned counsel relies on the judgment of Supreme Court in the case of Deccan Merchants Cooperative Bank Ltd. v/s M/s Dalichand Jugraj Jain and others, reported in AIR 1969 SC 1320 to submit that the subject matter of the suit does not relate to the business of the Society and therefore, a dispute under section 91 of the said Act will not be maintainable. Perusal of the judgment of the Supreme Court, however, shows that the Supreme Court was not considering a case of the Cooperative Housing Society but was considering a case of the Cooperative Bank which had purchased the

building and the question that was under consideration before the Supreme Court was whether the business of the Cooperative Bank would be ownership of the building. In the present case, the Society is a Cooperative Housing Society and according to the provisions of section 91 of the said Act, if it is a dispute in relation to the business of the Society, it can be decided under section 91, as also dispute relating to management of the Society also falls within the ambit of section 91. Whether a shop in the building of the Society is to be allowed to be partitioned, whether the shop is permitted to be sold if partition is not possible, are all questions relating to the management of the Society. Therefore, prima facie it appears that the subject matter of the suit may be covered by the provisions of section 91 and instead of a suit, a dispute under section 91 of the Maharashtra Cooperative Societies Act may be maintainable. In this views of the matter therefore, as it prima facie appears that the suit may not be maintainable in this Court, the plaintiff cannot be granted any interim relief. Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.